

NOT FOR PUBLICATION      FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

CLEVE-ALLAN GEORGE d/b/a VIRGIN	)	
ISLANDS ASBESTOS REMOVAL CO.,	)	
	)	
Plaintiff,	)	
	)	Civ. No. 2002-189
v.	)	
	)	
ALVIN WILLIAMS TRUCKING AND	)	
EQUIPMENT RENTAL, INC.,	)	
	)	
Defendant.	)	

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ATTORNEYS:

**A. Jeffrey Weiss, Esq.**  
St. Thomas, U.S.V.I.  
*For the plaintiff,*

**Charles S. Russell, Jr., Esq.**  
St. Thomas, U.S.V.I.  
*For the defendant.*

MEMORANDUM

Moore, J.

Plaintiff has invoked this Court's federal question and bankruptcy jurisdiction under 28 U.S.C. §§ 1331, 1334, by alleging a violation of a bankruptcy automatic stay. Defendant, Alvin Williams Trucking, Inc. ["AWT" or "defendant"],<sup>1</sup> has moved to dismiss for lack of subject matter jurisdiction. Because this Court has original subject matter jurisdiction, I will not

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<sup>1</sup> Defendant has alleged that the plaintiff improperly designated it as "Alvin Williams Trucking and Equipment Rental, Inc." in styling this action.

dismiss the case but will refer it to the Bankruptcy Division.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

On November 9, 2000, the Virgin Islands Housing Authority ["VIHA"] contracted with AWT for the demolition of certain buildings in the Estate Donoe public housing project. On November 16, 2000, AWT contracted with plaintiff, Cleve-Allen George d/b/a Virgin Islands Asbestos Removal Co., to perform asbestos removal at the Donoe housing project. George began work on the contract and received periodic payments from AWT. In January 2001, the Virgin Islands Department of Planning and Natural Resources ["DPNR"] through its delegated authority issued a stop work order to VIHA on the Donoe housing project because the asbestos was being removed in violation of federal environmental and safety standards. Both parties agree that in April 2001, the stop work order was lifted with the instruction that VIHA provide on-site air monitoring of the asbestos removal. Both parties recited that VIHA failed to install the on-site air monitoring until the Fall of 2001.

George alleges that he was unable to work on the project because of the lack of air monitoring on the site from April 2001 to October 9, 2001, through no fault of his own. He contends that he resumed work on October 9, 2001, the same day he filed

for Chapter 13 bankruptcy relief in the Bankruptcy Division [the "Bankruptcy Court"]. See *In Re George*, No. 301-00037 (Bankr. D.V.I. 2001). George listed his contract with AWT in the petition as an asset of the bankruptcy estate. (Ch. 13 Pet., Sch. G.) A Chapter 13 petition generally operates as an "automatic stay" on all actions against the debtor or against the property of the bankruptcy estate, and a party in interest must ask the bankruptcy court to grant relief from the stay. See 11 U.S.C. § 362.<sup>2</sup> On October 9, 2001 George also filed his Chapter 13 plan and Bankruptcy Judge Joseph L. Cosetti appointed a trustee.

On November 30, 2001, VIHA issued a notice to AWT that George contends suspended AWT from working on the Donoe housing project for failure to furnish the necessary insurance certificates. This notice to the general contractor AWT effectively barred George from continuing work as a

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<sup>2</sup> Section 362 states that

a) . . . a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of--

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate . . .

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . .

if certain requirements are satisfied.

subcontractor. On December 18, 2001, AWT terminated its contract with George, alleging both actual and anticipatory breaches, without first obtaining relief from the automatic stay from the Bankruptcy Court.

On May 6, 2002, George filed his amended Chapter 13 plan with the Bankruptcy Court. On June 4, 2002, the trustee filed a motion to dismiss because George had not made a payment since December 4, 2001 and was in arrears \$ 6,929.00. In response, Judge Cosetti postponed the confirmation on the plan until June 25, 2002, and stated that the case was "ripe for dismissal" because; among other things, no plan had been confirmed for nine months and the trustee had not received the proposed payments. George moved to voluntarily dismiss the bankruptcy case on July 12, 2002, and Judge Cosetti dismissed the case on July 17, 2002.

On October 3, 2002, George brought a civil suit against AWT in the district court for the first time raising a claim under 11 U.S.C. § 362(h) of the bankruptcy code that AWT violated the automatic stay when it terminated the asbestos removal contract.<sup>3</sup> George further claims that he was unable to consummate his Chapter 13 reorganization plan as a result of AWT's violation of

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<sup>3</sup> Under section 362(h), an individual "injured by any willful violation of a stay provided by this section shall recover actual damages, including cost and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(h).

the automatic stay, and has suffered significant losses and damages, including but not limited to lost profits and consequential damages. There is nothing in the record of the Chapter 13 bankruptcy case before Judge Cosetti indicating that George ever questioned the effect of AWT's termination of the contract on the automatic stay, much less that it rendered him unable to consummate his reorganization plan. This is surprising inasmuch as these assertions go to the heart of his Chapter 13 proceeding.

George also seeks recovery against AWT under various civil territorial causes of action. AWT has moved to dismiss the complaint for lack of subject matter jurisdiction but has also challenged George's claims on the merits. Because I will transfer the case back to Judge Cosetti for him to determine the matter, including whether George waived his right to challenge a violation of the automatic stay by not raising it in the Chapter 13 proceeding, I do not reach the merits of the plaintiff's claims.

## **II. DISCUSSION**

While the District Court of the Virgin Islands has the same subject matter jurisdiction over all bankruptcy actions as a

United States district court in a state,<sup>4</sup> Congress also gave this Court the same authority to refer these actions to the bankruptcy judges for the district as part of the 1984 Bankruptcy amendments. See 28 U.S.C. 157(a); See also *In re Jaritz Industries*, 151 F.3d 93, 99 (3d Cir. 1998). Pursuant to this authority, the District Court of the Virgin Islands refers all bankruptcy cases or proceedings filed under Title 11 of the United States Code to the bankruptcy judges for the district:

- (1) Any or all cases under Title 11 of the United States Code and any or all proceedings arising under Title 11 of the United States Code, or arising in or relating to a case under Title 11 of the United States Code shall be referred to the bankruptcy judges for the district.

*In re General Rules*, Misc. No. 1990-20 (Standing Order dated *nunc pro tunc* April 1, 1990.)

Because this Court has subject matter jurisdiction over the claim of violation of the automatic stay provided by 11 U.S.C. § 362, I will deny the motion to dismiss. Inasmuch as this action is brought under 11 U.S.C. § 362(h) for violation of an automatic stay and therefore falls squarely under the standing order, I

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<sup>4</sup> "The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to . . . that of a bankruptcy court of the United States." Revised Organic Act of 1954, § 22(a), 48 U.S.C. § 1612(a), reprinted in V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 152 (1995) (preceding V.I. CODE ANN. TIT. 1); see also 28 U.S.C. § 152(a)(4) (the 1984 Bankruptcy amendments provide that "[t]he judges of the district courts for the territories shall serve as the bankruptcy judges for such courts.").

will refer the entire case, including the pendant territorial claims, to the Bankruptcy Court and Judge Cosetti for disposition. See, e.g., *Pereira v. First North American Nat. Bank*, 223 B.R. 28 (N.D. Ga. 1998) (explaining that the bankruptcy court that issued the stay was the "more proper forum" for a section 362(h) action).

### III. CONCLUSION

This Court has original subject matter jurisdiction over bankruptcy actions, but I will transfer the case to the Bankruptcy Court pursuant to the standing order.

**ENTERED this 16th day of January, 2004.**

**FOR THE COURT:**

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**Thomas K. Moore**  
**District Judge**